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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11
12 RAHILA KHAN,) Case No.: 3:12-cv-01107-LB
13) *Assigned to the Honorable:*
14 Plaintiff,) *Laurel Beeler*
15)
16 v.) **REPLY OF DEFENDANT**
17) **SELECT PORTFOLIO**
18 RECONTRUST COMPANY; BANK) **SERVICING, INC.’TO**
19 OF AMERICA, N.A.; SELECT) **PLAINTIFF’S OPPOSITION TO**
20 PORTFOLIO SERVICING, INC.; and) **THE MOTION TO DISMISS THE**
21 DOES 1 through 10,) **SECOND AMENDED**
22 Defendants.) **COMPLAINT**
23)
24)
25)
26)
27)
28)

29 **TO THIS HONORABLE COURT AND TO ALL PARTIES AND**
30 **THEIR ATTORNEYS OF RECORD:**

31 **PLEASE TAKE NOTICE** Defendant SELECT PORTFOLIO
32 SERVICING, INC. (“SPS” or “DEFENDANT”) hereby replies to the
33 Opposition to the Motion to Dismiss the Complaint of Plaintiff RAHILA
34 KHAN (“Plaintiff”) as follows:
35

I. INTRODUCTION

Plaintiff's Opposition does nothing to salvage her defective Cause of Action for Fraud, as it still remains unclear what SPS is alleged to have misrepresented, who at SPS is alleged to have misrepresented it, when the supposed misrepresentation occurred, and how Plaintiff detrimentally relied thereupon. In the absence of such details, the SAC fails to state facts sufficient to support a typical claim, much less one that requires a heightened degree of specificity (such as Plaintiff's claim for fraud). As such, Plaintiff's lone Cause of Action should be dismissed without leave to amend.

II. ARGUMENT

A. The First Cause of Action for Fraud Lacks Sufficient Facts.

1. This Claim is Time-Barred.

A simple review of Plaintiff's Cause of Action for Fraud confirms that it arises from when "Bank of America made false statements when denying Plaintiffs with a Mortgage Modification."¹ Yet, as pointed out in greater detail in the Motion to Dismiss, Plaintiff should have discovered the alleged fraud in 2010 (when the modification in question was supposedly cancelled). Since Plaintiff failed to file suit against SPS until some four years later, her claim is barred by the Statute of Limitations.

To the extent Plaintiff attempts in the Opposition to point to events that took place after the SAC was filed as grounds for equitable tolling, such fails since they have nothing to do with Plaintiff's discovery "of the facts constituting the fraud or mistake." California Code of Civil Procedure §338(d).

2. No Facts Suggesting a Misrepresentation was Made.

Neither the SAC nor the Opposition contains any facts showing that SPS misrepresented a material fact to Plaintiff. To the contrary, the Opposition confirms that SPS could not have made the misrepresentation which gives rise

1 to Plaintiff's fraud claim, as Plaintiff admits that SPS "took over the loan from
2 BOA" in 2013 (several years after the alleged misrepresentations were made).²
3 Accordingly, this claim fails as against SPS.

4 3. No Reliance.

5 In addition to the above, there are no facts to suggest that Plaintiff relied
6 on any representation (whatever that may be) made by SPS either. Because
7 there are no such facts, this claim necessarily fails as against SPS.

8 4. Failure to Allege Claim with Required Degree of Specificity.

9 As pointed out in the Motion to Dismiss, a claim for fraud must be plead
10 specifically. Fed. Rules. Civ. Proc. Rule 9(b). This entails specifying in the
11 Complaint the circumstances constituting fraud, including the time, place,
12 manner of each fraud, and the role of each defendant in each scheme. *LeDuc v.*
13 *Kentyck Cen. Life Ins. Co.*, 814 F.Supp. 820, 830 (N.D. Cal.1992).

14 There are no specific details in the SAC implicating SPS in the alleged fraud.
15 The Opposition does nothing to cure this defect, as the only details it provides
16 pertain to events that took place several years after the supposed fraud in
17 question. Accordingly, this claim must be dismissed.

18 **III. CONCLUSION**

19 Based upon the foregoing, Defendant respectfully requests that the Court
20 grant its Motion to Dismiss the SAC, without leave to amend.

21 Respectfully submitted,

22 WRIGHT, FINLAY & ZAK, LLP

23 Dated: February 2, 2015

24 By: /s/ James J. Ramos

25 Gwen H. Ribar, Esq.,
26 James J. Ramos, Esq.,
27 Attorneys for Defendant,
SELECT PORTFOLIO
SERVICING, INC.

28 ¹ See Plaintiff's SAC, ¶29.

² See ¶30 of Plaintiff's SAC.

PROOF OF SERVICE

I, Barbara Espinoza, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 4665 MacArthur Court, Suite 200, Newport Beach, California 92660. I am readily familiar with the practices of Wright, Finlay & Zak, LLP, for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

On February 2, 2015, I served the within **REPLY OF DEFENDANT SELECT PORTFOLIO SERVICING, INC. TO PLAINTIFF'S OPPOSITION TO THE MOTION TO DISMISS THE SECOND AMENDED COMPLAINT** on all interested parties in this action as follows:

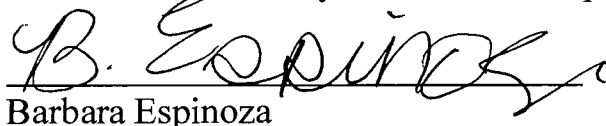
[X] by placing [] the original [X] a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Rahila A Khan
40224 Blanchard Street
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Tel: (510) 938-0873
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Plaintiff In Pro Per

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Tel.: (415) 398-3344
Fax: (415) 956-0439
Email: bsw@severson.com
**Attorney for Defendants Recontrust Company
and Bank of America, N.A.,**

- 1 ☐ (BY MAIL SERVICE) I placed such envelope(s) for collection to be mailed on this
 2 date following ordinary business practices.
- 3 ☐ (BY CERTIFIED MAIL SERVICE) I placed such envelope(s) for collection to be
 4 mailed on this date following ordinary business practices, via Certified Mail, Return
 5 Receipt Requested.
- 6 ☐ (BY PERSONAL SERVICE) I caused personal delivery by ATTORNEY
 7 SERVICE of said document(s) to the offices of the addressee(s) as set forth on the
 8 attached service list.
- 9 ☐ (BY FACSIMILE) The facsimile machine I used, with telephone no. (949) 477-
 10 9200, complied with California Rules of Court, Rule 2003, and no error was
 11 reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I
 12 caused the machine to print a transmission record of the transmission, a copy of
 13 which is attached to the original Proof of Service.
- 14 ☒ (BY GOLDEN STATE OVERNIGHT- NEXT DAY DELIVERY) I placed true and
 15 correct copies thereof enclosed in a package designated by Golden State Overnight
 16 with the delivery fees provided for.
- 17 ☐ (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the
 18 office(s) of the addressee(s) listed by electronic mail at the e-mail address(es) set
 19 forth above pursuant to Fed.R.Civ.P.5(b)(2)(E). "A Notice of Electronic Filing
 20 (NEF) is generated automatically by the ECF system upon completion of an
 21 electronic filing. The NEF, when e-mailed to the e-mail address of record in the
 22 case, shall constitute the proof of service as required by Fed.R.Civ.P.5(b)(2)(E). A
 23 copy of the NEF shall be attached to any document served in the traditional manner
 24 upon any party appearing pro se."
- 25 ☒ (FEDERAL) I declare under penalty of perjury under the laws of the United States
 26 of America that the foregoing is true and correct.

27 Executed on February 2, 2015, at Newport Beach, California.

28 
 Barbara Espinoza